

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 35-005-15-1-4-00277-15  
**Petitioner:** Jeffrey M. Wertenberger  
**Respondent:** Huntington County Assessor  
**Parcel:** 35-05-23-200-662.400-005  
**Assessment Year:** 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated its appeal with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) on August 15, 2015. The PTABOA issued notice of its final determination on October 16, 2015.
2. Petitioner filed its Form 131 petition with the Board on December 1, 2015, electing to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 8, 2016. Neither the ALJ nor the Board inspected the property.
4. Jeffrey M. Wertenberger, taxpayer, Terri Boone, Huntington County Assessor, and Julie Newsome, Huntington County Deputy Assessor, were all sworn as witnesses<sup>1</sup>

**Facts**

5. The subject property is an auto and tire repair shop located at 1400 South Jefferson Street in Huntington.
6. For 2015, the PTABOA determined the assessment was \$100,700 for the land and \$122,700 for the improvements for a total assessed value of \$223,400.

**Record**

7. The official record contains the following:

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<sup>1</sup> Ms. Boone did not testify at the hearing.

- a. A digital recording of the hearing
- b. Exhibits:

Petitioner Exhibit A:	Form 131,
Petitioner Exhibit B:	Form 130,
Petitioner Exhibit C:	Valuation record for the subject property,
Petitioner Exhibit D1-D12:	Photographs of the subject property with explanation,
Petitioner Exhibit E:	Comparison of 1317 S. Jefferson (Hiner property) with the subject property,
Petitioner Exhibit F:	Petitioner’s conclusions regarding appeal,
Petitioner Exhibit G-J:	Rebuttal to Respondent Exhibits 5, 8, 9, and 10,
Petitioner Exhibit K:	Listing information for 301 Hauenstein Road,
Petitioner Exhibit L:	Retailer map,
Petitioner Exhibit M:	Listing information for 1885 N. Jefferson,
Petitioner Exhibit N:	Leasing information for 1000 E. Market Street,
Petitioner Exhibit O:	Listing information for 1375 Swan Street,
Petitioner Exhibit P-Q:	Description of the building’s deterioration.
Respondent Exhibit 1:	Form 131,
Respondent Exhibit 2:	Form 115,
Respondent Exhibit 3:	Form 130,
Respondent Exhibit 4:	Description and analysis of subject property with property record card (“PRC”) and photograph,
Respondent Exhibit 5:	Sales comparison approach,
Respondent Exhibit 6:	Assessment comparison,
Respondent Exhibit 7:	Value-in-use,
Respondent Exhibit 8:	Listings,
Respondent Exhibit 9:	Income approach,
Respondent Exhibit 10:	RealtyRates capitalization rates and reserve requirements,
Respondent Exhibit 11:	Cost approach,
Respondent Exhibit 12:	Concluding comments.
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of Hearing,
Board Exhibit C:	Hearing sign-in sheet.

- c. These Findings and Conclusions.

**Objections**

- 8. Petitioner objected to Respondent Exhibit 5 because it did not show that part of the 17,808 square feet included a 4,608 square foot pole barn, which is in poor condition. Respondent’s comparables include a car dealership, two restaurants, and a grocery store.

The exhibit does not include a better comparable property, which is a truck repair facility, located directly across the street from the subject property. That property sold for \$175,000.

9. Petitioner objected to Respondent Exhibit 8 because the CarMart property shown as listed for \$450,000 is currently listed for \$325,000. Furthermore, the Niswander property located at 1885 North Jefferson Street, is actually listed for \$495,000, not \$550,000.
10. Petitioner also objected to Respondent Exhibits 9 and 10 which refer to the income approach, because his property is being compared to a brick grocery store listed for rent at \$7.00 per square foot. He claims the subject property is nowhere near that retail area.
11. Petitioner's objections go to the weight of the exhibits and not their admissibility. The Board therefore admits Respondent Exhibits 5, 8, 9, and 10 over Petitioner's objections.

### **Burden**

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
14. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer

evidence to prove the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. I.C. § 6-1.1-15-17.2(b).

17. The assessed value increased from \$198,500 to \$223,400 from 2014 to 2015 which is an increase of approximately 12.5%. Because the assessed value increased by more than 5%, Respondent has the burden of proving the 2015 assessment is correct. To the extent Petitioner seeks an assessment below the value of \$198,500, he has the burden to prove that lower value.

### **Summary of Parties' Contentions**

18. Respondent's contentions:
  - a. The property is an auto and tire repair shop in Huntington. It consists of a one-story frame building and a pole barn situated on 1.679 acres. Respondent contends that the property is adequately maintained and in average condition. *Newsome testimony; Resp't Ex. 4.*
  - b. To support the assessment, Respondent considered the three approaches to value: the sales comparison approach, the income approach, and the cost approach. Respondent also prepared an assessment comparison of auto-related properties. *Newsome testimony.*
  - c. For the sales comparison approach, Respondent used the sales of four properties purportedly similar to the subject property. The properties are located in the same county and economic market as the subject property. The adjusted sales prices of the purportedly comparable properties range from \$25.49 to \$44.79 per square foot. All of the sales occurred between 2011 and 2014. Adjustments were only made for time and land size. Respondent claims there was a lack of documentation to support other adjustments to the comparables to account for dissimilarities. Consequently, Respondent gave the sales comparison approach little to no weight *Newsome testimony; Resp't Ex. 5.*
  - d. Respondent performed an assessment comparison to determine if the subject property's assessed value was out of line with similar properties. The purportedly comparable properties are all in the same taxing district as the subject property. They are assessed between \$11.23 per square foot and \$83.89 per square foot. The subject property is assessed at \$12.54 per square foot. *Newsome testimony; Resp't Ex. 6.*
  - e. There are also active listings of auto-related properties. The CarMart building at 301 Hauenstein is listed for \$450,000, and the property at 1885 N. Jefferson Street is listed for \$550,000. Both properties are located in Huntington. Another property, 207 E. South Street in Monroeville, is listed for \$175,000. *Newsome testimony; Resp't Ex. 7.*

- f. Respondent also attempted to develop the income approach to value the subject property. All of the market income and expense information was obtained from retail properties on the south side of Huntington for the years 2012, 2013, and 2014. The average market retail rate is \$4.25 per square foot annually. RealtyRates<sup>2</sup> indicated a capitalization rate for the first quarter of 2015 at 9.08%, which was then loaded with a 3% tax rate. *Newsome testimony; Resp't Exs. 9 and 10.*
- g. Respondent calculated the value based on the income approach as follows:

Potential Gross Income (\$4.25 x 17,808 sq. ft.)	\$75,684.00
Vacancy & Collection Loss (10%)	(\$7,123.00)
Miscellaneous Income (1%)	\$712.00
Effective Gross Income	<u>\$69,273.00</u>
Expenses (35%)	(\$25,804.00)
Reserves (\$.88)	<u>(\$15,671.04)</u>
Net Operating Income	\$27,797.96
Capitalization Rate	<u>12.08%</u>
2015 Value	\$230,115.56.

*Newsome testimony; Resp't Ex. 9.*

- h. The cost approach to value for the subject property resulted in a value of \$223,400, or \$12.54 per square foot for 2015. *Newsome testimony; Resp't Ex. 11.*
- i. After developing and analyzing the three approaches along with the assessment comparison, Respondent contends that the market value-in-use should remain at \$223,400 for 2015. *Newsome testimony; Resp't Ex. 12.*

19. Petitioner's contentions:

- a. The assessment with regard to the improvements increased by approximately 25.5% from 2014 to 2015. At the PTABOA hearing, the Deputy Assessor told Petitioner that the condition of the property had been upgraded. Petitioner contends that the condition of the property did not improve. Petitioner contends that, in fact, the condition has continued to deteriorate. *Wertenberger testimony; Pet'r Exs. F and P.*
- b. Petitioner testified that, over the years, Wertenberger Tire has installed and removed calcium chloride in farm tractor tires. Calcium chloride is a salt solution that gets into the air and rusts the building on the subject property. Petitioner has had to encase the steel beams of the building in concrete where they have rusted in order to support the building. Other issues include:
- The service department floor is rough from dropping tools, wheels, and other items on it for 37 years.
  - The metal roof is original and has rusted areas.

<sup>2</sup> RealtyRates is a commercial data resource consisting of U.S. real estate investment and development news.

- When it rains, it leaks inside the building both in the back bays and in the used tire room. In the front of the building, the rain goes through the roof and through the overhang onto the pavement.
- Truck drivers have repeatedly backed into the receiving door and bent the metal building. They have also bent the steel beam that holds up one corner of the building.
- The decorative roof on the American Legion side of the building has deteriorated.
- The gas between the layers of glass in several showroom windows has leaked and the windows have clouded.
- The carpeting in the office is original.
- There are large cracks in the concrete under the showroom floor.
- The front parking lot has large holes that have been repeatedly repaired over the years. It creates a negative value as it needs to be removed, milled, and a new surface applied.
- Gutters in the unheated pole barn break when they freeze and, in the winter, water on the floor also freezes.
- Birds have torn out the insulation in the truck bay roof overhang. They enter the warehouse where the roof no longer meets the wall and activate the motion detectors in the warehouse. Petitioner has tried to fill the gaps without success.

*Wertenberger testimony; Pet'r Exs. D1-D12; P and Q.*

- c. Petitioner contends that the most relevant sale comparable to the subject property, the Hiner property, is located across the street. It was a former truck repair shop. The property consists of three parcels. The building is 21,105 square feet and is entirely heated. Wertenberger Tire is 13,200 square feet and most of it is unheated because it is used for a warehouse. The Hiner property sold for \$175,000 on June 10, 2015. *Wertenberger testimony; Pet'r Exs. E-H.*
- d. Petitioner contends that Respondent refused to look at the Hiner property because, although it was similar to the subject property, it was zoned differently. In Respondent's comparison she lists two out of town truck repair shops but does not mention the Hiner property. *Wertenberger testimony; Pet'r. Ex. H; Resp't Ex. 5.*
- e. Although zoning was an excuse not to use the Hiner property as a comparable property, Petitioner contends zoning was disregarded by Respondent in regard to other comparable properties. Respondent compares the subject property with 342 E. 1st Street, which is zoned as a service station; 171 E. 2nd Street which is zoned as a restaurant; 690 W. Logan, which is zoned as a restaurant; 220 South Jefferson, which is zoned as a commercial supermarket; and 1855 North Jefferson, which is zoned as commercial auto sales. *Wertenberger testimony; Pet'r Ex. H; Resp't Exs. 5 and 8.*
- f. Respondent's Exhibit 8 includes three listings. The CarMart property located at 301 Hauenstein Road has been for sale for many years. It is in a high value location on

the north side of Huntington in a major retail area. Respondent shows it listed at \$450,000, but Petitioner contends it is currently listed for \$325,000. The property at 1885 N. Jefferson is located on an ideal corner on the north side of Huntington close to Huntington Plaza. It is across from Walgreens and McDonalds and is exposed to significant traffic. A prospective buyer offered the owner \$500,000 for the property with the intent of demolishing the building and constructing a convenience store. The zoning for the project did not materialize, however, and the building remains empty. Petitioner contends it is currently listed for \$495,000 and not \$550,000 as indicated on Respondent Exhibits 7 and 8. *Wertenberger testimony; Pet'r Ex. I; Resp't Exs. 7 and 8.*

- g. Under the income approach, Respondent attempts to compare the subject property with a former Marsh grocery store. Petitioner contends that the Marsh store is a beautiful brick building that is mostly heated and cooled. It is on the busiest corner of the south side of Huntington. The property is available for rent at \$7 per square foot and is assessed at \$9 per square foot. It has been empty for many years. In contrast, the subject property is not heated, is much smaller, and is in a less desirable location with less traffic. *Wertenberger testimony; Pet'r Ex. I; Resp't Exs. 9 and 10.*

#### ANALYSIS

20. Respondent did not establish a prima facie case that the assessed value was correct. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2015 assessment was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Respondent first presented a sales comparison analysis. She presented a spreadsheet with sale prices of four properties purported to be comparable to the subject property. In order to rely on such evidence in an assessment appeal, a party must first show that the properties being examined are comparable to each other. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471.
- d. In this case, Respondent made adjustments to the comparable properties for land size and time of sale. She did not, however, make any adjustments for location, improvement size, or age because, by her own admission, there was a lack of documentation to support adjustments for dissimilarities. She consequently gave little or no weight to the sales comparison approach. The Board agrees with Respondent and finds the sales comparison approach is not probative evidence of the value of the property.
- e. Respondent next presented an assessment comparison analysis. She contends that the subject property was assessed fairly compared to six auto-related properties in the area. Pursuant to Ind. Code § 6-1.1-15-18(c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district ....” However, “the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” *Id.*
- f. Here, Respondent observed that the assessed values per square foot of all of the properties ranged from \$11.23 to \$83.89. She contends that the subject property is assessed equitably with other properties and, in fact, at \$12.54 per square foot, is the second lowest assessed value in the range. Location, lot size, age, quality of construction, and condition all play a role in the value of a property. Conclusory statements that a property is “similar” or “comparable” to another property are not probative evidence. *Long*, 821 N.E.2d at 471. Respondent made no attempt to identify specific similarities or differences among the purportedly comparable properties and the subject. Consequently, the assessed values of the purportedly comparable properties do not support a finding that Petitioner’s property was assessed correctly.
- g. Respondent also attempted to develop the income capitalization approach to support the assessed value. While Respondent testified that the market income and expenses came from information taken from retail properties on the south side of Huntington for the years 2012, 2013, and 2014, she did not supply any specific data to support those values. Furthermore, she failed to offer any support for other factors that were used such as the reserve rate or the capitalization rate.

- h. As part of making a prima facie case, “it is the taxpayer’s duty to walk the [Board] through every element of [its] analysis.” *Long*, 821 N.E.2d at 417 (quoting *Clark v. Dep’t of Local Gov’t Fin.*, 779 N.E.2d 1277, 1282 n. (Ind. Tax Ct. 2002)). This requirement applies equally to an assessor bearing the burden. The record in this case contains no supporting documentation to provide a basis for the selection of the factors discussed herein.
- i. Respondent finally attempted to present the cost approach to prove the assessed value is correct. In doing so, Respondent merely presented evidence stating that the value of the subject property is \$223,400 or \$12.54 per square foot. There is no supporting data to indicate how Respondent arrived at such values. As stated previously, “it is the taxpayer’s duty to walk the [Board] through every element of [its] analysis.” *Id.*
- j. Because Respondent failed to offer enough probative evidence to show the subject property’s market value-in-use, she failed to make a prima facie case that the 2015 assessment is correct. Therefore, Petitioner is entitled to have the assessment returned to its 2014 level of \$198,500. That determination does not end the Board’s inquiry, however, because Petitioner requested a value of \$180,000.
- k. Petitioner first points to the condition of the property. However, simply identifying examples of deferred maintenance does little to identify a range of values or to prove a property’s market value-in-use.
- l. Petitioner also points to the sale of a truck repair facility located across from the subject property. The property sold for \$175,000 on June 10, 2015. The property was larger than the subject and had more heated square footage. Petitioner contends that his property, when compared with the truck repair facility, is worth even less than what he has requested.
- m. While the sale may be proximate enough in time to the valuation date at issue, Petitioner only compared a few characteristics of the truck repair facility to the subject. Petitioner failed to explain how any differences affect the value and also failed to show that the sale occurred as part of an arm’s-length transaction. The transfer record shows the property was transferred by a Sheriff’s Deed from Service Realty, LLC to Wells Fargo Bank for \$545,000 on August 8, 2013. Mitchell Mounsey purchased the property from Wells Fargo on June 15, 2015 for \$175,000. Petitioner’s purported comparable sale is not probative of the subject property’s market value-in-use.
- n. Because he did not offer probative evidence to show the market value-in-use, Petitioner failed to make a case for reducing the assessment below \$198,500.

**CONCLUSION**

- 21. Respondent failed to meet her burden of proving that the 2015 assessment of \$223,400 is correct. The assessment therefore must be reduced to the previous year’s level of \$198,500. Petitioner failed to make a prima facie case for reducing the assessment any further.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 assessed value must be changed to \$198,500.

ISSUED: September 6, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.